

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
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5 WINTEK CORPORATION, : Case Nos.
6 Petitioner, : IPR2013-00567
7 v. : IPR2013-00568
8 TPK TOUCH SOLUTIONS INC., : IPR2014-00541
9 Patent Owner. :

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13 TELECONFERENCE PROCEEDINGS
14 SAN FRANCISCO, CALIFORNIA
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The following is the transcript of the teleconference proceedings reported at the offices of:

Quinn Emanuel Urquhart & Sullivan
50 California Street
San Francisco, California 94111

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APPEARANCES (continued):

On Behalf of Patent Owner:
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By: Joseph Richetti

Also Present:
Bingbing Jiang
Mandarin Interpreter, Chinese Translator

PRESIDING:
Josiah C. Cocks,
Administrative Patent Judge
Richard E. Rice,
Administrative Patent Judge
Toni R. Scheiner,
Administrative Patent Judge

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APPEARANCES:

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PROCEEDINGS

(Conference call in session at 10:45 a.m.)
MR. PALYS: Hello, Your Honor. This is Joseph Palys, counsel for Wintek, and I have with me Derek Tang, counsel for TPK. And, Your Honors, I don't know if you got the emails that we sent, the court reporter that was going to take the deposition, she's here and she's recording, if that's okay with you.

ADMINISTRATIVE JUDGE COCKS: Yes, that's fine. We did get your email. Thank you.

This is Judge Cocks, and I have Judge Rice with me on the line. All right. Mr. Palys, I believe you scheduled the call --

MR. PALYS: Right. I appreciate it. First, let me apologize for interrupting the day for everyone, but we have an issue regarding this deposition.

So TPK filed a declaration of a Mr. Tsai, a TPK employee, with his response to the petitioner's petition. The declaration of Mr. Tsai was in English, and, in preparation for this reply, Your Honors, we were asking TPK's counsel for the availability of Mr. Tsai so we can take his deposition and we inquired

1 back on July 31st when we sent an email out to TPK's
2 counsel.

3 And in between that, those dates, throughout
4 the next weeks and days we continued to ask for dates.
5 And then once we got the date confirmed, which was
6 today, we asked for the location, which, on August
7 20th, we were finally told where the location would
8 be.

9 We served our notice for Mr. Tsai on August
10 24th, but the point here, Your Honors, is that at no
11 time during the entire communications regarding this
12 deposition did TPK mention or hint that Mr. Tsai would
13 require an interpreter. His declaration was in
14 English. We had many conversations with TPK about
15 actually Mr. Tsai's declaration.

16 You may recall that there was an issue with an
17 Exhibit 2019, which was related to Mr. Tsai's
18 declaration, but at no time were we in any
19 understanding that there would be a requirement for an
20 interpreter. And we believe that this is in violation
21 of Rule 4253(e) and the interpretation of that rule
22 and the Ariosa decision, IPR2012 matter 22.

23 And, in particular, Rule 4253(e) requires that,
24 if an interpreter is going to be used during a
25 deposition, it says the party calling the witness must

1 initiate a conference call with the Board at least
2 five business days before the deposition -- that would
3 be us. But if you read the Ariosa decision, Your
4 Honors, you will see that there is also a
5 requirement -- obviously we have to know that there is
6 going to be a requirement for an interpreter, and if
7 you look at how the Ariosa decision interpreted this
8 rule -- there was some guidance by Judge Green in that
9 decision -- and some relevance -- some of the aspects
10 relevant here is that at least five business days
11 before the cross-examination of the deposition the
12 parties shall provide to the opponent the name,
13 address, business telephone number, email address and
14 resume of the person --

15 (Clarification by reporter.)

16 MR. PALYS: -- basically give the contact
17 information about the interpreter, which we were never
18 given. It also allows us to provide a cross-check
19 interpreter, and within five days we would have to
20 provide -- five days from the deposition -- provide
21 that information and serve that on TPK.

22 The fact of the matter is, Your Honors, when I
23 arrived today I was surprised to hear the request,
24 like, do you have your own interpreter. TPK showed up
25 with its own interpreter. I had no idea that this was

1 going to be a deposition that would not be in English,
2 and so, therefore, we started our discussions with
3 counsel.

4 We believe at this point, Your Honors, it's
5 highly prejudicial for Wintek to proceed with this
6 deposition without Wintek having its own interpreter
7 present. If TPK's here with its own interpreter, I
8 don't know if anyone else on TPK's side speaks or
9 understands Chinese, including its counsel -- I
10 certainly don't -- and we believe that it's in
11 violation of this rule. We think it's highly
12 prejudicial to proceed.

13 And we tried to discuss alternate dates with
14 TPK's counsel, and what I've been told is that
15 Mr. Tsai is not available at all in the entire month
16 of September. And so they wanted to proceed today
17 with this deposition, and they were trying to offer to
18 go look for interpreters for us, which, obviously, we
19 think is still prejudicial. We should be given the
20 opportunity to provide our own interpreter and have
21 them present here.

22 It's now almost 11:00, Your Honor. We were
23 supposed to start at 9:00. This is on Pacific time.
24 I had scheduled my day, my schedule, for an English
25 deposition. As you know, a translated deposition is

1 going to be much longer. In fact, I have some
2 meetings that I have to be in back in DC for tomorrow
3 and even overnight. I have a meeting scheduled with a
4 client in the middle of the night. And right now, I
5 even checked with my travel agent, and there's no
6 return flights direct to -- back to Dulles, and I'm
7 sitting here trying to scramble, trying to find
8 additional flights to see if I can't make my
9 originally scheduled flight that I was supposed to
10 depart.

11 So, at the end of the day, I think you get the
12 crux of our position, Your Honors -- I'm happy to
13 answer any questions -- but we think at this point
14 it's extremely prejudicial for Wintek to proceed
15 without its opportunity to follow the rules, get its
16 own interpreter, and be able to cross-check how this
17 deposition proceeds.

18 ADMINISTRATIVE JUDGE COCKS: Okay. I can
19 understand your position. I'll have Mr. Richetti
20 speak in just a minute. I have one question.

21 So I believe you mentioned that Mr. Tsai's
22 declaration was in English and there was no indication
23 that it was a result of -- with the aid of an
24 interpreter. Is that what you said?

25 MR. PALYS: That's correct. There's

1 nothing in the declaration indicating whether he
2 reads, writes or doesn't understand English or
3 anything like that. It was completely in English.

4 ADMINISTRATIVE JUDGE COCKS: Okay. And so
5 what, just to be clear, what are you asking now --
6 what relief are you seeking?

7 MR. PALYS: Well, the relief is that we
8 postpone this deposition so that Wintek has an
9 opportunity, now that we know there is a need for an
10 interpreter -- I've just received this morning the
11 credentials of TPK's interpreter, and so we would like
12 the opportunity to go and look for our own interpreter
13 and reschedule this deposition.

14 And, of course, given that this issue was
15 raised by TPK's lack of following, in our
16 interpretation, the rules, that an order be granted to
17 compensate Wintek for the reasonable costs of my
18 travel to come out here today.

19 ADMINISTRATIVE JUDGE COCKS: All right.

20 Mr. Richetti, do you have comments?

21 MR. RICHETTI: Yes, Your Honor. I do
22 believe, while Mr. Palys is correct that many
23 discussions were had over a long period of time about
24 these depositions, some were discussions about having
25 the deposition in Taiwan instead of the U.S., and the

1 parties couldn't reach an agreement. There were many
2 discussions. And the details of the deposition in
3 particular came together, you know, shortly, you know,
4 in the last week or so when everything was finalized,
5 you know, between the parties, including, as Mr. Palys
6 mentioned, the notice of deposition was filed just a
7 couple of days ago without, obviously, any objection
8 from TPK because the parties were working together to
9 try to arrange these depositions in a way that was
10 mutually acceptable to both parties.

11 It is true that, you know, in rushing to have
12 these depositions scheduled, the idea of an
13 interpreter being here for the witness was not
14 mentioned, and that, we acknowledge, is our fault.

15 What we were hoping to do, because the witness
16 is from Taiwan and flew in from Taiwan and does have a
17 very hectic work schedule, you know, flying to
18 different countries, we were hoping that the
19 deposition would go forward today but yet still
20 mitigate any potential prejudice to Wintek. And
21 that's why we offered -- and I believe my co-counsel,
22 Mr. Tang, could elaborate -- but we believe we have
23 secured a second interpreter to be able to come to the
24 deposition by 1:00 p m. or right after lunch.

25 So our hope was that, you know -- we

1 acknowledge that, you know, that communication didn't
2 happen and it should have. That's definitely not in
3 dispute. In taking into consideration the witness's
4 schedule and all the parties to try to mitigate it,
5 the situation, we're trying to come up with
6 alternative solutions, and one was to have a second
7 interpreter come in that would give Wintek the ability
8 to have their own interpreter to, you know, to
9 understand if there is any issues.

10 The second, you know, we appreciate that these
11 depositions do take longer, but the witness is willing
12 to stay late and accommodate in any way we can just to
13 avoid having to have the deposition rescheduled and
14 the expense associated with that, and would appreciate
15 any guidance the Board would have for us.

16 ADMINISTRATIVE JUDGE COCKS: Let me ask
17 Mr. Palys. I believe you said that this second
18 interpreter, that is not acceptable? Is that --

19 MR. PALYS: There's a couple issues with
20 that. Again, and, to be honest with you, Your Honor,
21 we're being forced on the spot to another interpreter
22 that's being selected by TPK. Wintek has not been
23 given the opportunity to do its own work to look for
24 its own interpreter.

25 And also, I'll just reiterate again, I know

1 we're considering the schedule of the witness, and, of
2 course, we always try to accommodate that, but this
3 issue has affected my schedule. I mean, as I
4 mentioned, I have meetings that I have to be in DC
5 tomorrow and including tonight, and I've scheduled my
6 day accordingly based on an English-based deposition.

7 Having -- waiting until 1:00 to proceed with a
8 translated deposition is -- clearly, I'm not going to
9 make my flight home, and in fact there's no direct
10 return flights available at all other than the one
11 that I'm on. Now we're looking at some other indirect
12 flight, and it's probably going to be a red eye, which
13 means I'm going to miss this meeting that I've
14 scheduled with a foreign client in the middle of the
15 night and then hopefully still make my meetings
16 tomorrow. So I think there's other issues at play
17 here.

18 ADMINISTRATIVE JUDGE COCKS: Okay. I
19 understand. But moving to the interpreter issue, yes,
20 we agree that you should be able to select an
21 interpreter. If this interpreter is not acceptable,
22 then there is an issue.

23 Mr. Richetti, I believe Mr. Palys suggested
24 they would like to reschedule this deposition at a
25 later date, and that Mr. Tsai is not available at any

1 time in the month of September? Is that the case?

2 MR. RICHETTI: If I could, Your Honor, my
3 co-counsel, Mr. Tang, will be in the best position to
4 answer that question.

5 ADMINISTRATIVE JUDGE COCKS: All right.
6 Okay. Mr. Tang?

7 MR. TANG: Thank you, Your Honor. This is
8 Derek Tang, and thanks for your time.

9 You know, the negotiations we've had so far was
10 Mr. Palys told us that a day that he would be
11 available to come back and take the deposition -- the
12 day he offered was September 17th -- and that, you
13 know, that specific date and actually that whole
14 specific time frame is, unfortunately, not doable for
15 our witness.

16 ADMINISTRATIVE JUDGE COCKS: Let me ask
17 you: What is the time frame? What time frame are you
18 referring to?

19 MR. TANG: I think, you know, we did
20 grant -- we did grant Wintek an extension to, you
21 know, to file their response, so that's due in the
22 month. So that's the time frame we're talking about.

23 Unfortunately, Mr. Tsai's operations are in
24 Taiwan, and he's traveling back and forth between
25 Taiwan and Japan and China throughout that time

1 period.

2 One other thing that we had talked about was,
3 you know, the location of the deposition. Mr. Palys
4 had mentioned that we had previously discussed
5 potentially holding the deposition in Taiwan because
6 of the difficulties of Mr. Tsai's schedule and
7 allowing him to come to the U.S. at the end of the
8 day, as an accommodation. We agreed to bring Mr. Tsai
9 to the U.S., and he took several days out of his
10 schedule to fly in specifically for the purpose of
11 this deposition.

12 Unfortunately, given his job requirements, he
13 won't be able to do that again within the time period.
14 He won't be able to come to the United States. You
15 know, I don't know --

16 ADMINISTRATIVE JUDGE COCKS: You understand
17 the other side's position is they were not aware and
18 it was never made clear to them that Mr. Tsai did not
19 speak English and would therefore need an interpreter
20 for a deposition. That seems like a fairly sizeable
21 omission.

22 MR. TANG: Yes, Your Honor. We apologize
23 if there was a miscommunication. We were discussing
24 all the aspects of the deposition, and, if that wasn't
25 conveyed, you know, then obviously there was a

1 miscommunication.

2 So, with that in mind, Your Honor, we are
3 trying our absolute best to try to mitigate the
4 prejudice to all parties involved, including opposing
5 counsel, given that we are all here today. We have
6 been contacting agencies this morning and we have
7 gotten at least one -- so far -- interpreter who is
8 available. These are all neutral sources. And we
9 believe that the best way to just mitigate the
10 prejudice on everybody on having to return again,
11 having to set up another time -- which may or may not
12 even be possible -- would be to proceed with the
13 deposition today, if at all possible.

14 So, you know, we believe we're doing everything
15 in our power to make that happen, you know, we --
16 we're providing the resume of the interpreter to
17 Mr. Palys. And, you know, we're happy to do whatever
18 it takes to make sure that if there are issues that
19 they haven't been able to select their own
20 interpreter --

21 ADMINISTRATIVE JUDGE COCKS: That does
22 appear to be an issue. Let me ask you: When will
23 Mr. Tsai be available again in the United States for
24 deposition? Mr. Tang?

25 MR. TANG: Your Honor, we haven't discussed

1 dates too far out, so we would have to get back and
2 discuss that with counsel.

3 ADMINISTRATIVE JUDGE COCKS: Do you
4 anticipate that there would be a date at some point
5 where Mr. Tsai would be available in the United
6 States? I understand it's a slightly speculative
7 question, but we're trying to see if we can reach a
8 mutually agreeable resolution to this issue.

9 MR. TANG: No, we completely understand.
10 Unfortunately, in the United States right now it does
11 not look like there's any availability.

12 MR. RICHETTI: Your Honor, this is
13 Mr. Richetti for TPK. Was your question, after the
14 respondent's fee, whether there would be any
15 availability or, you know, within the dates for Wintek
16 to reply?

17 ADMINISTRATIVE JUDGE COCKS: Well,
18 certainly within the date for Wintek to reply.

19 MR. PALYS: Your Honor, this is Joseph
20 Palys. If I may, Mr. -- is it Tsai or Tsai? I'm
21 sorry. I don't want to mispronounce ...

22 MR. TANG: Tsai.

23 MR. PALYS: He's here today. We could ask
24 him, right. He's available with his schedule. It's
25 not like he's not here. We can ask him when he's

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